

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DAVID KLUCKA,

Plaintiff,

v.

RANDALL REGO, et al.,

Defendants.

Case No. 2:15-cv-01535-JCM-PAL

**ORDER  
– AND –  
REPORT OF FINDINGS AND  
RECOMMENDATION**

(IFP Apps. – Dkt. #5, #7)  
(Stip. Ext. Time – Dkt. #9)

This matter is before the Court on Plaintiff David Klucka's Application to Proceed *In Forma Pauperis* (Dkt. #5, #7), as well as his Stipulation for Extension of Proof of Service Due Date (Dkt. #9). These filings are referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and LR IB 1-3 and 1-4.

Plaintiff is a pretrial detainee in the custody of the Clark County Detention Center, and he proceeding in this action *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and requested permission to proceed *in forma pauperis* ("IFP"), meaning without prepaying the full \$400.00 filing fee.<sup>1</sup> See Pl.'s Compl. (Dkt. #1-1); IFP Apps. (Dkt. #1, #5, #7); Am. Compl. (Dkt. #8). However, on at least three (3) occasions, this Court has dismissed civil actions that Plaintiff commenced while in detention as frivolous or for a failure to state a claim upon which any relief may be granted. See *Klucka v. Lippis*, Case No. 2:05-cv-01285-JCM-GWF (D. Nev. Nov. 29, 2006) (dismissing § 1983 claims against justice of the peace and deputy district attorney, who had absolute immunity from such claims); *Klucka v. Barker*, Case No. 2:15-cv-02162-JAD-NJK (D. Nev. Dec. 8, 2015) (dismissing § 1983 claims with prejudice

<sup>1</sup> Pursuant to the Court's Schedule of Fees dated January 1, 2015, the administrative fee of \$50.00 does not apply to persons granted *in forma pauperis* status under 28 U.S.C. § 1915. However, when the Court denies a plaintiff *in forma pauperis* status, the full \$400.00 filing fee applies.

1 against appointed counsel and investigator, who were not state actors); *Klucka v. Powell*, Case  
 2 No. 2:15-cv-01609-RCJ-NJK (D. Nev. Jan. 5, 2016) (dismissing § 1983 claims with prejudice  
 3 against appointed counsel and investigator, who were not state actors); *Klucka v. Almase*, Case  
 4 No. 2:15-cv-01658-RFB-PAL (D. Nev. Feb. 17, 2016) (dismissing § 1983 claims with prejudice  
 5 against appointed counsel, who was not a state actor).<sup>2</sup> Pursuant to 28 U.S.C. § 1915(g), “if [a]  
 6 prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought  
 7 an action or appeal in a court of the United States that was dismissed on the grounds that it is  
 8 frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not  
 9 proceed IFP and, instead, must pay the full \$400.00 filing fee in advance unless he is “under  
 10 imminent danger of serious physical injury.”

11 In this case, Mr. Klucka alleges § 1983 claims arising from the conduct of Defendants  
 12 Randall Rego, Irene Contreras, and John Does #1 and #2. The Amended Complaint (Dkt. #8)  
 13 alleges that Rego and Contreras made false statements to the arresting police officers in his  
 14 criminal case and then committed perjury while testifying at the August 21, 2013 preliminary  
 15 hearing. *Id.* at 5–8. The Court finds that these allegations fail to plausibly allege that Mr.  
 16 Klucka is in imminent danger of serious physical injury. *See Andrews v. Cervantes*, 493 F.3d  
 17 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g) applies if the complaint  
 18 plausibly alleges the prisoner faced imminent danger of serious physical injury at the time of  
 19 filing).

20 Additionally, the Court notes that Plaintiff has filed several complaints in the past making  
 21 very similar, unmeritorious allegations. *See, supra*, Klucka cases dismissed. The case law  
 22 clearly demonstrates that Mr. Klucka may not bring a § 1983 action against Defendants Rego  
 23 and Contreras based their testimony in the criminal case. *See Briscoe v. LaHue*, 460 U.S. 325,  
 24 329–330 (1983) (finding that § 1983 “does not allow recovery of damages against a private party  
 25 for testimony in a judicial proceeding”); *Rehberg v. Paulk*, --- U.S. ----, 132 S. Ct. 1497, 1504–  
 26 05 (2012) (same). The Court therefore finds that such allegations fail to state a claim upon  
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28 <sup>2</sup> The Court takes judicial notice of its prior records in the above matters.

1 which relief may be granted. Accordingly, the undersigned recommends that this case be  
2 dismissed with prejudice.

3 Based on the foregoing,


4 **IT IS ORDERED:**

- 5 1. Plaintiff David Klucka's Stipulation for Extension of Proof of Service Due Date  
6 (Dkt. #9) is DENIED.

7 **IT IS RECOMMENDED** that:

- 8 1. Plaintiff David Klucka's Applications To Proceed *In Forma Pauperis* (Dkt. #5, #7)  
9 be DENIED.  
10 2. Plaintiff David Klucka's Amended Complaint (Dkt. #8) be DISMISSED WITH  
11 PREJUDICE.  
12 3. The Clerk of the Court be instructed to enter judgment accordingly.

13 Dated this 25th day of April, 2016.

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15   
16 PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE

17 **NOTICE**

18 This Report of Findings and Recommendation is submitted to the assigned District Judge  
19 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for  
20 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the  
21 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local  
22 Rules of Practice, any party wishing to object to a magistrate judge's findings and  
23 recommendations of shall file and serve *specific written objections*, together with points and  
24 authorities in support of those objections, within 14 days of the date of service. *See also* 28  
25 U.S.C. § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to  
26 Magistrate Judge's Report of Findings and Recommendation," and it is subject to the page  
27 limitations found in LR 7-4. The parties are advised that failure to file objections within the  
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1 specified time may result in the district court's acceptance of this Report of Findings and  
2 Recommendation without further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121  
3 (9th Cir. 2003). In addition, failure to file timely objections to any factual determinations by a  
4 magistrate judge may be considered a waiver of a party's right to appellate review of the findings  
5 of fact in an order or judgment entered pursuant to the recommendation. *See Martinez v. Ylst*,  
6 951 F.2d 1153, 1156 (9th Cir. 1991); Fed. R. Civ. Pro. 72.